

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1221

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In The  
**United States Court of Appeals**  
For The Second Circuit

B  
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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

vs.

CARLOS ALBERTO MUNOZ and LOUIS CARDINAS,

*Defendants-Appellants.*

*On Appeal from the United States District Court for the Eastern  
District of New York*

---

**JOINT APPENDIX  
FOR DEFENDANTS-APPELLANTS**

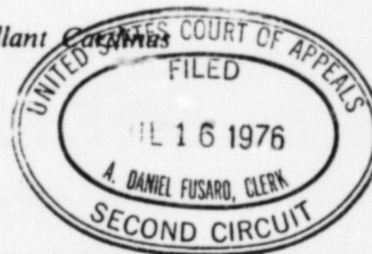
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TABLE OF CONTENTS

	<u>Page</u>
Docket Entries.....	1a
Indictment.....	3a
Court's Charge to the Jury..	6a

## DOCKET ENTRIES

**JUDGE/ MAGISTRATE** Assigned Trial **0720** **U.S. vs. 76 CR 131**  
**LUIS CARDENAS A/K/A Luis Cardona**  
 Defendant **2**  
 Day Mo. **19 2** **76 131**  
 No. of **5** **PLATT**  
 Defendants **76 M32**

**CHARGES**  
 U.S. CODE **21-846 & 963**  
 OFFENSES **Did conspire to import into the US cocaine and to distribute same**  
 COUNTS **1**  
 MAGR. CASE NO. **76 M**

**TORNEYS**  
 U.S. Attorney or Asst. **David De Petris**  
 Defense: CJA, Ret., Waived, Self, None, Other, L.P.D., L.C.D.  
**Richard Rosenkranz**  
**66 Court St., Bklyn, NY.**  
**875-9440**

**BAIL • RELEASE**  
☐ Personal R  
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☐ AMT ☐ Conditional Re  
 Set (000) ☐ 10%  
 \$ **100** ☐ Sure  
☐ Colls  
☐ Bail Not Made  
☐ Bail Status Changed  
 (See Docket) ☐ 3rd Cust  
☐ PSA

**ARREST** **2-11-76** U.S. Custody Began on Above Charges  
☐ High Risk Defn. & Date Design'd  
☐ Prosecution Deferred

**INDICTMENT** **2-19-76** Information ☐ Waived ☐ Superseding Indict/Info ☒ **3-11-76**

**ARRAIGNMENT** **2/27/76** Trial Set For **3/15/76**  
 1st Plea **"**  
 Final Plea ☐ Not Guilty ☐ Nolo ☐ No Guilty ☐ No Guilty

**TRIAL** **3/15/76** Voir Dire ☒ Trial Began ☒ Trial Ended ☒ **3/18/76**

**SENTENCE** **5/14/76** Disposition **3/18/76**  
☐ On All ☐ On La Offense  
☐ Convicted ☐ Acquired ☐ WOP  
☐ Dismissed ☐ Nolo/Discontinued

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING	Date Scheduled <b>2-23-76</b>	<input type="checkbox"/> Dismissed <input type="checkbox"/> Exonerated
Arrest Warrant	Served			<input type="checkbox"/> Waived <input type="checkbox"/> Not Waived	<input checked="" type="checkbox"/> Intervening Indictment	<input type="checkbox"/> Held for District CJ <input type="checkbox"/> To Trial District
COMPLAINT		<b>2-11-76</b>	<b>VAC 070A</b>	Tape No.	INITIAL/No. <b>VAC 070</b>	<input checked="" type="checkbox"/> Held to Answer to U. S. District Court
OFFENSE (In Complaint)		<b>T. 21 USC Sections 846 &amp; 963 - Conspiracy to import and distribute cocaine</b>				

Magistrate's Initials **VAC**

Show last names and suffix numbers of other defendants on same indictment/information  
**MUNOZ 1; GONZALO 3; JARAMILLO 4; GUERRERO-PUELLO 5**

DATE	PROCEEDINGS	(a)	(b)
<b>2-11-76</b>	Arraignment - AUSA DePetris (David) - DC Oscar Gonzales Suarez (for Arraignment) 3785 Bway NYC		
<del>2-11-76</del>	<del>Before JUDD, J - Indictment filed.</del>		
<b>2-19-76</b>	Before JUDD, J - Indictment filed.		
<b>2-25-76</b>	Before PLATT, J - case called - motion for bail application argued - motion denied - adjd to 2-27-76 @ 9:30 am.		
<b>2/27/76</b>	Before PLATT, J - Case called - deft and counsel present - deft arraigned and enters a plea of not guilty - bail contd interpreter present - case adjd to 3/15/76 for trial		
<b>3/11/76</b>	Notice of motion to inspect, etc. filed ret. 3/15/76		
<b>3-11-76</b>	Before MISHLER, CH J - SUPERSEDING INDICTMENT FILED-S		
<b>3-15-76</b>	Notice of Appearance filed.		
<b>3-15-76</b>	Before PLATT, J - case called - deft & counsel present - Interpreters Alma Cartagena, Efrain Sanchez & Emil Rodriguez present and sworn - Trial ordered and Begun - Jurors selected and sworn - Govt Ex.#1 ordered sealed by the Court. Trial contd to 3-16-76. Deft arraigned and after being advised of his rights and on his own behalf enters a plea not guilty to the superseding indictment.		
<b>3-16-76</b>	Before PLATT, J - case called - trial resumed - Interpreters Adela Lupo and Joseph Elia sworn - Court orders Ex. 1 for IDN unsealed - trial contd to 3-17-76.		



DATE	IV. PROCEEDINGS (continued)	2a	V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
3-16-76	Before PLATT, J - case called - trial resumed - Interpreters Adela Lupo and Joseph Elias sworn - Court orders Ex. 1 for IDN unsealed - Trial contd to 3-17-76					
3/17/76	Before PLATT, J.- Case called- deft and counsel present- trial resumed- trial contd to 3/18/76					
3/18/76	Before PLATT, J.- Case called- deft and counsel present- trial resumed- jury retires to deliberate- jury returns with a verdict of guilty as charged- jury polled- jury discharged- trial concluded- By PLATT, J.- Order of sustenance filed					
3/18/76	Before PLATT, J.- Case called- deft and counsel present- deft's motion to set aside verdict denied Interpreter sworn- deft sentenced to imprisonment for a period of 18 months and deft shall serve a special parole term following such sentence of 15 years on condition that he leave the U.S. and not return during such special parole term- On motion of A.U.S.A. Among the underlying indictment is dismissed.					
5/14/76	Judgment and Commitment filed- certified copies to Marshal					
5/14/76	Notice of appeal filed					
5/14/76	Docket entries and duplicate of notice of appeal mailed to court of appeals					
5/19/76	Certified copy of Judgment and Commitment ret'd and filed- deft delivered to MCC					
5-24-76	Order received from the Court of appeals that the record be docketed on or before June 14, 1976					
5-24-76	Voucher for compensation of atty filed (T'O'Brien)					
5-11-76	Record on appeal certified and mailed to the court of appeals.					
5-21-76	Receipt for record on appeal received from the C of A filed.					
5-29-76	Voucher for expert services filed					
5-29-76	Supplemental Record on appeal certified and mailed to the court of appeals					
6-30-76	Transcript dated 3-18-76 filed					
6-7-76	Stenographer's transcript dtd 5-14-76 filed.					
6-7-76	Acknowledgment received from C of A for supplemental record on appeal filed.					

T. Contin Grants 3161 (7) i.e. an Justice plexity between interest  
 U. Time b guilty i.e. wi drawal.  
 V. Time w moving from st tutions transfer decline cedure.  
 W. Grand J Stamen tailed 3161 (7)  
 V. Any del. charged b any st and del.

875-1975  
 INDICTMENT  
 TRIAL  
 SEN

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## INDICTMENT (Filed February 19, 1976)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- -x

UNITED STATES OF AMERICA

- against -

CARLOS ALBERTO MUNOZ,  
LUIS CARDENAS, also known as  
Luis Cardona, also known as  
Jose Uribe,  
MARIN GONZALO,  
HECTOR JARAMILLO and  
JORGE ALBERTO GUERRERO-PUELLO,

Defendants.

----- -x

THE GRAND JURY CHARGES:

On or about and between the 28th day of January 1976 and on the 11th day of February 1976, both dates being approximate, within the Eastern District of New York and elsewhere, the defendants CARLOS ALBERTO MUNOZ, LUIS CARDENAS, also known as Luis Cardona, also known as Jose Uribe, MARIN GONZALO, HECTOR JARAMILLO and JORGE ALBERTO GUERRERO-PUELLO, together with others known and unknown to the grand jury, did knowingly and intentionally combine, conspire, confederate and agree to violate Section 841(a)(1), Section 952(a) and Section 960(a)(1) of Title 21, United States Code.

1. It was part of said conspiracy that the defendants

SUPERSEDING INDICTMENT

Cr. No. 76 CR 131(s)  
(T. 21, U.S.C., §841(a)(1),  
§846, §952(a), §960(a)(1),  
and §963)



would knowingly and intentionally import into the United States from places outside thereof, a quantity of cocaine, a Schedule II narcotic drug controlled substance.

2. It was further a part of said conspiracy that the defendants would knowingly and intentionally distribute and possess with intent to distribute a quantity of cocaine, a Schedule II narcotic drug controlled substance.

3. It was further a part of said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others were committed within the Eastern District of New York and elsewhere:

1. On or about and between the 31st day of January 1976, and the 10th day of February 1976, the defendant JORGE ALBERTO GUERRERO-PUELLO traveled by vessel from Buenaventura, Columbia to Brooklyn, New York.

2. On or about the 11th day of February 1976, the defendants CARLOS ALBERTO MUNOZ, LUIS CARDENAS, also known as Luis Cardona, also known as Jose Uribe, MARIN GONZALO and HECTOR JARAMILLO met together with the defendant JORGE ALBERTO

GUERRERO-PUELLO in New York, New York. (Title 21, United States Code, Section 846 and Section 963).

A TRUE BILL

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FOREMAN

---

DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



## COURT'S CHARGE TO THE JURY

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1

THE COURT: Bring them in.

2

(Jury enters box.)

3

THE COURT: Now, gentlemen, step up here for one  
mement, please.

5

(Side bar.)

6

THE COURT: Alternate number one is not here.  
I assume there is no objection to going ahead without  
her.

9

MS. AMON: No objection.

10

MR. C\*BRIEND: No objection. The other inter-  
preter is here.

12

THE COURT: I am going to start.

13

(The following occurred in open court:)

14

THE COURT: Now, ladies and gentlemen, the time  
has come for me to give you instructions on the law in  
this case. I am going to read the instructions to you.  
It is my practice to read instructions to a jury rather  
than give them extemporaneously because for the most  
part it reduces the risk of error in the instructions  
on the law, which is important.

21

I realize it makes it harder for you to follow  
the instructions that way, but I beg your indulgence and  
ask you to listen as carefully as possible. If my voice  
falls off, let me know. Raise your hand or otherwise  
let me know so I know you are getting everything that I

22

23

24

25

3 1 do say.

2 Now that you've heard the evidence and the  
3 arguments, it becomes my duty to give the instructions  
4 of the Court as to the law applicable to this case.

5 It is your duty as jurors to follow the law as  
6 stated in the instructions of the Court, and to apply  
7 the rules of law, so given to the facts as you find  
8 them from the evidence in the case.

9 You are not to single out one instruction alone  
10 as stating the law, but must consider the instructions  
11 as a whole.

12 Neither are you to be concerned with the wisdom  
13 of any rule of law stated by the Court. Regardless of  
14 any opinion you may have as to what the law ought to  
15 be, it would be a violation of your sworn duty to base  
16 a verdict upon any other view of the law than that  
17 given in the instructions of the Court; just as it would  
18 be a violation of your sworn duty, as judges of the  
19 facts to base a verdict upon anything but the evidence  
20 in the case.

21 You must not permit yourselves to be governed  
22 by sympathy, bias, prejudice or any other considerations  
23 not founded on evidence and the instructions on the law.

24 Justice through trial by jury must always depend  
25 on the individual juror to seek the truth as to the



## Judge's charge

1 facts from the evidence presented to all the jurors;  
2 and to arrive at a verdict by applying the same rules  
3 of law as given in the instructions of the Court.  
4

5 You have been chosen and sworn as jurors in this  
6 case to try the issues of fact presented by the allega-  
7 tions of the indictment and the denial made by the not  
8 guilty pleas; of the accused. You are to perform this  
9 duty without bias or prejudice as to any party. Again,  
10 the law does not permit jurors to be governed by sym-  
11 pathy, prejudice, or public opinion. Both the accused  
12 and the public expect that you will carefully and  
13 impartially consider all of the evidence in the case,  
14 follow the law as stated by the Court and reach a just  
15 verdict, regardless of the consequences.

16 Now, I am not going to send the exhibits which  
17 have been received in evidence with you as you require  
18 for your deliberations. You are entitled, however, to  
19 see any or all of the exhibits as you consider your  
20 verdict. I suggest that you begin your deliberations  
21 and then, if it would be helpful to you, you may ask  
22 for any or all of the exhibits simply by sending a  
23 note to me through one of the Deputy Marshalls who will  
24 be stationed outside your jury room door.

25 Now as I told you earlier, an indictment is but

## Judge's charge

a form of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is what we call direct evidence, just as the testimony of an eye-witness. The other is circumstantial evidence, the proof of facts and circumstances which rationally imply the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind. Thus, by way of example, the footprint of a man in the sand implied to Robinson Crusoe that there was another man with him on the desert island and indeed there was, the man Friday. Thus on the one hand you may have direct evidence of an issue, and on the other hand you may have circumstantial evidence of an issue. Law does not hold that one type of evidence is necessarily of better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt, both on the direct and circumstantial evidence. At times the jury may feel that circumstantial evidence is of better quality. At other times, it may feel direct evidence is of better quality. That judgment is left entirely to you.



6 1 As a general rule , the law makes no distinction  
2 between direct and circumstantial evidence, but simply  
3 requires that, before convicting a defendant, the jury  
4 be satisfied of the defendant's guilt beyond a reason-  
5 able doubt from all the evidence in the case.

6 Now, the law presumes the defendant to be inno-  
7 cent of crime. Thus, a defendant, although accused,  
8 begins the trial with a clean slate, with no evidence  
9 against him. And the law permits nothing but legal  
10 evidence presented before the jury to be considered in  
11 support of any charge against the accused. So the  
12 presumption of innocence alone is sufficient to acquit  
13 a defendant, unless the jurors are satisfied beyond a  
14 reasonable doubt of the defendant's guilt after a  
15 careful and impartial consideration of all the evidence  
16 in the case.

17 The burden is always upon the prosecution to  
18 prove guilt beyond a reasonable doubt. This burden  
19 never shifts to a defendant; for the law never imposes  
20 upon a defendant in a criminal case the burden or duty  
21 of calling any witnesses or producing any evidence.

22 Now, a reasonable doubt does not mean a doubt  
23 arbitrarily and capriciously asserted by a juror  
24 because of his or her reluctance to perform an unpleas-  
25 ant task. It does not mean a doubt arising from the

1  
2 natural sympathy which we all have for others. It is  
3 not necessary for the Government to prove the guilt of  
4 a defendant beyond all possible doubt. If that were  
5 the rule, very few people would ever be convicted. It  
6 is practically impossible to be absolutely sure and  
7 convinced of any controverted fact which, by its nature,  
8 is not susceptible of mathematical certainty. In  
9 consequence the law says that a doubt should be a  
10 reasonable doubt, not a possible doubt.

11 A reasonable doubt is a doubt based upon reason  
12 and common sense, the kind of doubt that would make a  
13 reasonable person to hesitate to act. Proof beyond a  
14 reasonable doubt must be therefore proof of such a  
15 convincing character that you would be willing to rely  
16 and act upon it unhesitatingly in the most important  
17 of your own affairs.

18 The jury will remember that a defendant is never  
19 to be convicted on mere suspicion or conjecture.

20 Again, a reasonable doubt means a doubt that is  
21 based on reason and must be substantial rather than  
22 speculative. It must be sufficient to cause a prudent  
23 person to hesitate to act in the most important affairs  
24 of his or her life.

25 The requirements of proof beyond a reasonable



## Judge's charge

doubt operates on the whole case and not on the separate bits of evidence. Each individual item of evidence need not be proven beyond a reasonable doubt.

Now, it is charged in the indictment that on or about and between the 28th day of January, 1976 and the 11th day of February, 1976, both dates being approximate, within the Eastern District of New York, and elsewhere, the defendants Carlos Alberto Munoz, Luis Cardenas, also known as Luis Cardona, also known as Jose Uribe, Marin Gonzalez, Hector Jaramillo and the co-conspirator, George Albert Guarrero Puelo, together with others, known and unknown to the grand jury, did knowingly and intentionally combine, conspire, confederate and agree to violate Section 841 (a) (1), Section 952 (a) and Section 960 (a) (1), Title 1 of the United States Code, and Title 21 of the United States Code. It was part of said conspiracy that the said defendants would knowingly and intentionally import to the United States from places outside thereof quantities of cocaine, a schedule two narcotic drug controlled substance.

It was further a part of said conspiracy that the defendants would knowingly and intentionally distribute and possess with intent to distribute a quantity of cocaine, a schedule two narcotic drug

## Judge's charge

controlled substance.

It was further a part of the said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent exposure of their activities, in furtherance of the conspiracy and to effect the objects thereof the following overt acts, among others, were committed within the Eastern District of New York and elsewhere.

One, on or about and between the 31st day of January, 1976 and the 10th day of February, 1976, the co-conspirator George Albert Guarrero Puelo travelled by vessel from Buena Ventura, Columbia, to Brooklyn New York.

Two, on or about the 11th day of February, 1976 the Defendants Charles Alberto Munoz, Luis Cardenas, also known as Luis Cardona, also known as Jose Uribe, Morin Gonzalo and Hector Jaramillo, meeting together with the co-conspirator Guarrero Puelo in New York, all in violation of Title 21, United States Code, Section 846 and 943.

Now, Section 846 of Title 21 of the United States code provides that: any person who attempts or conspires to commit any offense defined in this subchapter is in violation of the law."



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## Judge's charge

The Government says that the offense defined in the sub-chapter which the defendants conspired to violate was Section 21 which provides that; "it shall be unlawful for any person to knowingly or intentionally distribute or possess with intent to distribute a controlled substance."

Concaine is such a controlled substance.

Section 963 of Title 21 of the United States Code provides that; "Any person who attempts or conspires to commit any offense defined in this sub-chapter, being a separate sub-chapter, is in violation of the law."

The Government charges the defendants conspired to violate Section 962 (a) and Section 960 (a) (1) of that sub-chapter.

Section 962 provides that; "It shall be unlawful to import into the present territory or to import into the United States from any place outside thereof any controlled substance.

Cocaine is such a controlled substance.

Section 960 (1) or Title 21, United States Code, provides that; "Any person, contrary to Section 952, which I just read to you, knowingly or intentionally imports a controlled substance, such as cocaine, shall be in violation of the law."

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## Judge's charge

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The following are the essential elements which are required to be proven beyond a reasonable doubt in order to establish the offense of conspiracy charged in the indictment.

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One, that there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment;

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Two, that the conspiracy described in the indictment was wilfully formed and existed at or about the time alleged;

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Three, that the conspiracy was so willfully formed and existing for the purpose of knowingly and intentionally importing to the United States from places outside thereof a quantity of cocaine or for the purpose of knowingly and intentionally distributing and possessing, with intent to distribute, a quantity of cocaine or both.

19

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Four, that the accused wilfully became a member of the conspiracy;

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Five, that one of the conspirators thereafter, knowingly committed one of the overt acts charged in the indictment at or about the time and place alleged;

24

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Six, that such overt act was knowingly done in furtherance of the object of the conspiracy as charged;



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## Judge's charge

and,

Seven, that the accused was willingly and knowingly a member of the conspiracy with intent to further one of its objectives.

If the jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy, one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete, and it is complete as to every person found by the jury to have been willfully a member of the conspiracy at the time the overt act was committed.

Now, what is a conspiracy? A conspiracy is a combination of two or more persons by concerted act on to accomplish some unlawful purpose. So a conspiracy is a kind of partnership in criminal purposes in which each member becomes the agent of every other member of the conspiracy. The offense is a conspiracy or disagreement to disobey or disregard the law. Mere similarity of conduct amongst various persons and the fact they may have associated with one another and seen together

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## Judge's charge

and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. Mere association in and of itself may be the inference of guilt of conspiracy.

However, the evidence in a case need not show that the members entered into any express or formal agreement or that they directly, by words spoken, or in writing, stated between themselves that their object or purpose was to be or the details thereof or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show, beyond a reasonable doubt, in order to establish proof that a conspiracy existed is that the members in some way or manner, through some contrivance, positively or tacitly came to a mutual understanding to try to establish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out this alleged conspiracy, nor that all means or methods which were agreed upon were actually put into operation, nor all the persons charged as members of the alleged conspiracy were such.

What the evidence in the case must establish



## Judge's charge

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beyond a reasonable doubt, that this alleged conspiracy was knowingly formed and that one or more of the means or methods described in the indictment were agreed upon to be used to effect an object or purpose of the conspiracy as charged in the indictment and that two or more persons, including one or more of the accused, were knowingly members of the conspiracy as charged in the indictment.

In your consideration of the evidence in the case as to the offense of conspiracy, you should first determine whether or not a conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not each of the accused wilfully became a member of the conspiracy.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was wilfully formed, and that a defendant unlawfully became a member of the conspiracy either at its inception or afterwards, and that thereafter one or more of the conspirators committed one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a conviction even though the conspirators may not have succeeded in accomplishing

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## Judge's charge

1  
2 their common object or purpose and in fact may have  
3 failed doing so.

4 The extent of any defendant's participation,  
5 moreover, is not determinative of his guilt or innocence.  
6 A defendant may be convicted as a conspirator even  
7 though he may have played only a minor role in the  
8 conspiracy.

9 Now, an overt act is an act knowingly committed  
10 by one of the conspirators, in an effort to accomplish  
11 some object or purpose of the conspiracy. The overt  
12 act need not be criminal in nature, if considered sep-  
13 atately and apart from the conspiracy. It may be as  
14 innocent as the act of a man walking across the street,  
15 or driving an automobile, or using a telephone. It  
16 must, however, be an act which follows and tends towards  
17 accomplishment of the plan or scheme. It must be  
18 knowingly done in furtherance of some object or purpose  
19 of the conspiracy charged in the indictment. It is not  
20 necessary that all of the overt acts charged in the  
21 indictment were performed. One overt act is sufficient.

22 One may become a member of a conspiracy without  
23 full knowledge of all the details of the conspiracy.  
24 On the other hand, a person who has knowledge of a con-  
25 spiracy, but happens to act in a way which furthers some



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## Judge's charge

object or purpose of the conspiracy, does not thereby become a conspirator.

Before the jury may find one or more or all of the defendants or any other person has become a member of the conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the particular defendant or other persons whose claim to have been a member, willfully participated in the unlawful plan with the intent to advance or further some object of the conspiracy.

(continued next page)

## Charge

480

rs/ss  
1/2  
3/18

1  
2 THE COURT: (Continuing.) To act or  
3 participate willfully means to act or participate  
4 voluntarily or intentionally and with the specific  
5 intent to do something the law forbids; that is to say  
6 to act or participate with a bad purpose to either  
7 disobey or disregard the law.

8 So, if a defendant or any other person with  
9 understanding of the unlawful character of the plan,  
10 knowingly or encourages, advises or assists, for the  
11 purpose of furthering the undertaking or scheme, he  
12 thereby becomes a willful participant, that is a  
13 co-conspirator.

14 One who willfully joins in an existing  
15 conspiracy is charged with the same responsibility as  
16 if he had been one of the organizers or instigators of  
17 the conspiracy.

18 In determining whether a conspiracy existed,  
19 the jury should consider the actions and the  
20 declarations of all of the alleged participants.  
21 However, in determining whether a particular defendant  
22 was a member of the conspiracy, if any, the jury should  
23 consider only his acts and statements. He cannot be  
24 bound by the acts or declarations of other participants  
25 until it is established that the conspiracy existed,



2 and that he was one of its members.

3 Whenever it appears beyond a reasonable doubt  
4 from the evidence in the case that a conspiracy  
5 existed, and that a defendant was one of the members,  
6 then the statements thereafter knowingly made and the  
7 acts knowingly done, by any person likewise found to  
8 be a member, may be considered by a jury as evidence  
9 in the case as to the defendant found to have been a  
10 member, even though the statements or acts may have  
11 occurred in the absence and without the knowledge of  
12 the defendant, provided such statements and acts were  
13 knowingly made and done during the continuancy of such  
14 conspiracy, and in furtherance of some object or  
15 purpose of the conspiracy. Otherwise, any admission or  
16 incriminatory statement made or act done outside of  
17 Court, by one person, may not be considered as  
18 evidence against any person who is not present and did  
19 not hear the statement made or see the act done.

20 Therefore, statements of any conspirator which  
21 are not in furtherance of the conspiracy or made before  
22 its inception or after its termination may be  
23 considered as evidence against the person making them.

24 Now the indictment charges a conspiracy amongst  
25 all of the defendants and the co-conspirator

## Charge

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Guero Puello and others known and unknown to the grand jury; all who are named in the indictment as co-conspirators.

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A person cannot conspire with himself. Therefore, you cannot find any of the defendants guilty until you find beyond a reasonable doubt that he participated in the conspiracy as charged with at least one other person.

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With this qualification you may find all of the defendants guilty or some of the defendants guilty, some not guilty or all not guilty, all in accordance with these instructions and facts as you find them.

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Although the indictment charges a single conspiracy, it would be possible to find separate conspiracies, one relating to the willful combination and conspiracy to knowingly and intentionally import into the United States, from places outside thereof, quantities of cocaine and the other relating to knowingly and intentionally directing and possessing with intent to distribute a quantity of such cocaine.

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Whether there was one conspiracy, or two conspiracies, or no conspiracy at all, is a fact for you to determine in accordance with these instructions.

25

I have instructed you as to the considerations



2 of the acts and declarations of one alleged conspirator  
3 as evidence against another alleged conspirator. You  
4 will not consider any such act or declarations against  
5 any defendant unless you find beyond a reasonable  
6 doubt that the person doing the act or making the  
7 declaration was the member of the same conspiracy as  
8 was that defendant.

9 With respect to the question of possession, the  
10 law recognizes two kinds of possession; a person who  
11 knowingly has direct physical control over a thing, at  
12 a given time, is then in actual possession of it.

13 A person who, although not in actual possession,  
14 knowingly has both the power and the intention, at a  
15 given time, to exercise dominion or control over a  
16 thing, either directly or through another person or  
17 persons, is then in constructive possession of it.

18 The law recognizes also that possession may be  
19 sole or joint. If one person alone has actual or  
20 constructive possession of a thing, then possession is  
21 sole. If two or more persons share actual or  
22 constructive possession of a thing, possession is joint.

23 An act is done knowingly if done voluntarily and  
24 intentionally, and not because of mistake or accident  
25 or other innocent reason.

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## Charge

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The purpose of adding the word knowingly was to insure that no one would be convicted for an act because of mistake, or accident, or other innocent reason.

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An act is done willfully if done voluntarily and intentionally, and with specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

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Knowledge and intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operation of the human mind. But you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or committed by the defendant, and all other facts and circumstances in evidence which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the nature and probable consequences of acts knowingly done or knowingly omitted.

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Now, you will recall that the Court allowed into evidence the gun which was found, the loaded gun which was found under the seat of the car in this case. You will recall that I read to you an instruction on the law at that time. I'm going to reread that instruction



6<sub>1</sub> to you. It bears on the question of knowledge and  
2 intent.  
3

4 A scheme or plan, of course, as I indicated to  
5 you at that time, does not go to prove the actual  
6 charge here. It goes only -- it is admissible only  
7 to the question of knowledge, intent, willfulness of  
8 the accused in this case. The fact that the accused  
9 may have committed another act or offense at some time  
10 is not any evidence or proof whatever that at another  
11 time the accused committed the offense charged in the  
12 indictment, even though both offenses are of like  
13 nature or of a part of a scheme or plan.

14 Evidence as to an alleged simultaneous offense  
15 of a like nature or similar act or of a like nature  
16 may not therefore be considered by a jury in  
17 determining whether the act was committed in the  
18 charge in the indictment, nor such evidence may be  
19 considered for any other purpose whatever until the  
20 jury first finds other evidence in the case that  
21 establishes beyond a reasonable doubt that the accused  
22 did the act charged in the indictment; leaving aside  
23 the only question, he did it knowingly, intentionally  
24 or willfully and/or as part of a scheme or plan.

25 If the jury should find beyond a reasonable

2 doubt from the evidence in the case that the accused  
3 did the act charged in the indictment, then the jury  
4 may consider evidence as to an alleged simultaneous,  
5 earlier or later offense or act, of a like nature, in  
6 determining the state of mind, knowledge or intent with  
7 which the accused did the act charged in the indictment.  
8 Where all the elements of the alleged earlier offense  
9 of a like nature are established by evidence which is  
10 clear and conclusive, the jury may, but it is not  
11 obliged to, draw the inference and find that in doing  
12 the act charged in the indictment the accused acted  
13 willfully, knowingly and with specific intent, and not  
14 because of mistake or accident or other innocent  
15 reason.

16 Statements and arguments of counsel are not  
17 evidence in the case, unless made as an admission or  
18 stipulation of fact. When the attorneys on both sides  
19 stipulate or agree to the existence of a fact, you must,  
20 unless otherwise instructed, accept the stipulation as  
21 evidence, and regard that fact as proved.

22 Unless you are otherwise instructed, the evidence  
23 in the case always consists of testimony of the  
24 witnesses, regardless of who may have called them; and  
25 all exhibits received in evidence, regardless of who may



## Charge

have produced them and all facts which may have been admitted or stipulated; and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court; and any evidence ordered stricken by the Court, must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross-examination as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have seen or heard outside the Courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case and your verdict is to be based on evidence only. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testified. You are permitted to draw, from facts that you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the

2 case.

3 Now as I indicated to you from time to time,  
4 statements of lawyers are not evidence. If a lawyer  
5 asked a witness a question which contains an assertion  
6 of fact, you may not consider the assertion evidence of  
7 that fact.

8 Again, the lawyers' statements are not evidence.

9 There was opinion evidence in this case by the  
10 man from the Drug Enforcement Agency who gave his  
11 opinion with respect to the contents of the Government's  
12 exhibits which they claim to be cocaine. The rules of  
13 evidence ordinarily do not permit witnesses to testify  
14 of opinion or conclusion; an exception to this rule  
15 are as to those who we call expert witnesses, witnesses  
16 who by education and experience have become experts in  
17 some art, science, profession or calling and may state  
18 this opinion in which they profess to be expert and  
19 they also state their reason for the opinion. You  
20 should consider the expert opinion received in evidence  
21 in this case and give it such weight as you may think  
22 it deserves. If you should decide an opinion of an  
23 expert witness is not based on sufficient education,  
24 experience or you conclude the reasons given in support  
25 of the opinion are not sound, or if you feel it is



## Charge

10 1 outweighed by other evidence, you may in your  
2 discretion disregard the opinion entirely.  
3

4 You as jurors, are the sole judges of the  
5 credibility of the witnesses and the weight their  
6 testimony deserves.

7 You should carefully scrutinize all the testimony  
8 given, the circumstances under which each witness has  
9 testified, and every matter in evidence which tends to  
10 show whether a witness is worthy of belief. Consider  
11 each witness' intelligence, motive and state of mind,  
12 and demeanor and manner while on the stand. Consider  
13 the witness' ability to observe the matters as to which  
14 he has testified and whether he impresses you as  
15 having an accurate recollection of these matters.  
16 Consider also any relation each witness may bear to  
17 either side of the case; the manner in which each  
18 witness might be affected by the verdict; and the  
19 extent to which, if at all, each witness is either  
20 supported or contradicted by other evidence in the  
21 case.

22 Inconsistencies or discrepancies in the  
23 testimony of a witness, or between the testimony of  
24 different witnesses, may or may not cause the jury to  
25 discredit such testimony. Two or more persons witnessing

an incident or a transaction may see or hear it differently; an innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from an innocent error or intentional falsehood.

After you make your own judgment, you will give the testimony such credibility, if any, as you may think it deserves.

An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated and supported by any other evidence.

However, the jury should keep in mind that such testimony is always to be received with great caution and weigh it with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.



1 The law does not prohibit the use of  
2  
3 accomplice testimony, whether you approve of their use  
4 is not to enter into your consideration in this case.  
5 In certain types of cases the Government is out of  
6 necessity compelled to rely on testimony of accomplices  
7 or persons with criminal records or informers; other-  
8 wise it would be difficult to detect or prosecute some  
9 wrongdoers, and this particularly is true in conspiracy  
10 cases, and the Government has no choice in the matter,  
11 it must take the witnesses to the transaction.

12 As a universal rule in the courts, a defendant  
13 may be convicted on testimony of an accomplice standing  
14 alone, if you believe such testimony beyond a reasonable  
15 doubt. This would still be so even though the  
16 accomplice was a confirmed criminal. The testimony of  
17 a witness may be discredited or impeached by showing  
18 that he previously made statements which are  
19 inconsistent with his present testimony. The earlier  
20 contradictory statements are admissible only to  
21 impeach the credibility of the witness, and not to  
22 establish the truth of these statement . It is the  
23 province of the jury to determine the credibility to  
24 be given to the testimony of a witness who has been  
25 impeached.

2 If a witness is shown knowingly to have  
3 testified falsely concerning any material matter, you  
4 may have a right to distrust such witness' testimony  
5 in other particulars; and you may reject all the  
6 testimony of that witness or give it such credibility  
7 as you may think it deserves.

8 The law never compels a defendant in a criminal  
9 case to take the witness stand and testify; and no  
10 presumption of guilt may rise and no inference of  
11 any kind may be drawn from the failure of a  
12 defendant to testify. As stated before, the law never  
13 imposes upon a defendant in a criminal case a burden  
14 or duty of calling any witnesses or producing any  
15 evidence.

16 It is the duty of the attorney on each side of  
17 a case to object when the other side offers testimony  
18 or other evidence which the attorney believes is not  
19 properly admissible. You should not show prejudice  
20 against an attorney or his client because the  
21 attorney has made objections.

22 Upon allowing testimony or other evidence to  
23 be introduced over the objection of an attorney, the  
24 Court does not, unless expressly stated, indicate any  
25 opinion as to the weight or effect of such evidence.



2 As stated before, the jurors are the sole judges of  
3 the credibility of all witnesses and the weight and  
4 effect of all evidence.

5 When the Court has sustained an objection to a  
6 question addressed to a witness, the jury must  
7 disregard the question entirely, and may draw no  
8 inference from the wording of it, or speculate as to  
9 what the witness would have said if he had been  
10 permitted to answer any question.

11 The fact that the Court has asked one or more  
12 questions of a witness for clarification or  
13 admissibility of evidence purposes during the course of  
14 the trial, is not to be taken by you in any way as  
15 indicating the Court has any opinion as to the guilt  
16 or innocence of the defendants in this case and you are  
17 to draw no such inferences therefrom; that determination  
18 is up to you and you alone based on all the facts in  
19 the case and the applicable law in these instructions.

20 You are here to determine the guilt or  
21 innocence of the four defendants from the evidence in  
22 the case. You are not called upon to return a  
23 verdict as to the guilt or innocence of any other  
24 person or persons. So, if the evidence in the case  
25 convinces you beyond a reasonable doubt of the guilt of

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the accused, you should so find, even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself and herself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

(Continued next page.)



## Charge

Remember at all times, you are not partisans. You are the judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case, from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond reasonable doubt, say so. If not so proved guilty, say so.

Now, you must render a verdict with respect to each of the four defendants on the single count in the indictment. You must consider each defendant separately and consider each of them separate in light of all the instructions which I had read to you.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own

## Charge

recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way, at arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon retiring to the jury room, the juror seated closest to me, Juror No. 1, will act as your foreman unless he chooses not to do so. If he chooses not to do so, then you will elect a foreman or forelady from amongst your number. The foreman will preside over your deliberations and will be your spokesman here in Court.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a deputy marshal, signed by the foreman, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any other means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing, or orally here in



## Charge

open court.

Now you will note from the oath which will be taken by the deputy marshals that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Now, bear in mind because this is very important; you are never to reveal to any person, not even to the Court, how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict.

In other words, you're not to send me a note in which you say, "We stand thus and so for conviction or acquittal," or how you stand numerically. If you do, it will be necessary in all probability to declare a mistrial and impanel a new jury and retry the whole case. We don't want to have to do that unless it is necessary, don't you cause it.

If you do, and I hope this doesn't occur, if the occasion arises where you are hopelessly deadlocked, give me a note saying we're hopelessly deadlocked but do not send me a note on how you stand numerically or otherwise.

## Charge

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1  
2 If and when you reach a unanimous verdict,  
3 send me a note saying we have reached a unanimous  
4 verdict. Don't tell me what the verdict is. Wait  
5 until you come into open court and then you will be  
6 asked for your verdict as to each of the defendants  
7 separately and you will state your verdict in open  
8 court separately as to each defendant.

9 Those are the instructions of the Court. If  
10 you wish any portion of or all of the Court's  
11 instructions reread at any time during the course of  
12 your deliberations, just send me a note and I will do  
13 so. You should try to deliberate based on what you  
14 have and see if you can reach a unanimous verdict on  
15 that basis without sending me a lot of notes.

16 I will excuse you now for about five minutes  
17 while I discuss certain matters with the attorneys.  
18 I will then recall you and the alternates will be  
19 discharged and the twelve jurors who have survived  
20 these three days will begin deliberations. Meanwhile  
21 do not discuss the case.

22 (Jury excused.)

23 THE COURT: Mrs. Amon?

24 MS. AMON: I have no exceptions, your Honor.

25 MR. O'BRIEN: Your Honor, I believe that you



A 202 Affidavit of Personal Service of Papers  
COURT OF APPEALS  
FOR THE SECOND ~~REDACTED~~ CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES OF AMERICA,  
Appellee,

MUNOZ,  
Appellant.

- against -

Index No.

Affidavit of Personal Service

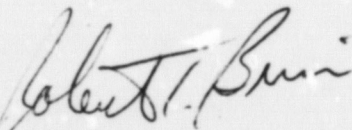
STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

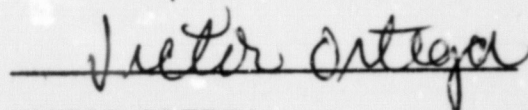
I, Victor Ortega *being duly sworn,*  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
1027 Avenue St. John, Bronx, New York  
That on the 16th day of July 1976 at 225 Cadman Plaza, Brooklyn, New York  
deponent served the annexed Joint Appendix upon

David Trager U.S. Attorney- Eastern District  
the Attorney in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the Attorney(s) herein.

Sworn to before me, this 16th  
day of July 19 76



ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977

  
VICTOR ORTEGA